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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/222,460	12/29/98	HAMMERMAN	M A-64236-3-RF

EXAMINER	
MOEZIE,F	
ART UNIT	**PAPER NUMBER**
1653	11

DATE MAILED: 06/01/00

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

1- File Copy

U.S. G.P.O. 1999 460-693

Office Action Summary	Application No. 09/222,460	Applicant(s) Hammerman, Etal
	Examiner F. T. Moezie	Group Art Unit 1653

☒ Responsive to communication(s) filed on *Mar 7, 2000*.

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *three* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *1-21* is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims *1-21* are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐approved ☐disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Serial Number: 09/222,460

Art Unit: 1653

DETAILED ACTION

STATUS OF CLAIMS

Claims 1-21 are pending examination in this application.

Claims 1-11 have originally been filed. In the amendment filed 27 March 1992, paper no. 10, claim 2 have been amended and NEW claims 11-21 have been added.

THE IDS AND THE SUPPLEMENTAL IDS

The IDS filed 21 January 2000, paper no. 8, and the supplemental IDS filed 7 February 2000, paper no. 9 have been entered in this file.

Upon a cursory review of the references submitted by the applicant and in view of the newly added claims the earlier indication of allowability regarding claims 1 and 3-11 is withdrawn and the following restriction requirement is deemed proper and applied.

RESTRICTION REQUIREMENT

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 2, 11 and 12, drawn to a method of treatment using an IGF as the active compound, classified in class 514, subclass 12, for example.

II. Claims 13-14, drawn to a method of treating using a TGF as the active compound, classified in class 514, subclass 12, for example.

III. Claims 15-16, drawn to a method of treating using an FGF as the active compound, classified in class 514, subclass 12, for example.

IV. Claim 17, drawn to a method of treating using VEGF as the active compound, classified in class 514, subclass 12, for example.

V. Claim 18, drawn to a method of treating using PDGF as the active compound, classified in class 514, subclass 12, for example.

VI. Claim 19, drawn to a method of treating using NGF as the active compound, classified in class 514, subclass 12, for example.

VII. Claims 10 and 21, drawn to a method of treating using GH as the active compound, classified in class 514, subclass 12.

Claims 1, 3-9 and 20 are examined insofar as they read on the elected invention as set forth above and upon allowance of an invention they will be considered for allowance provided that they are rewritten and are commensurate in scope with the elected-allowed invention.

1. The inventions are distinct, each from the other because of the following reasons:

Each active compound used in the claimed methods is distinct because each factor has a distinct structure which would elicit a unique physicochemical and pharmaceutical properties to said compound. Additionally, the manual and electronic searches are not co-extensive. A search for any one of the inventions as outlined above is not necessary for other inventions. Thus, it would be an undue burden to the examiner to search for all of the inventions in one application. Moreover, a reference which would obviate the use of one of the growth factors in a method ***as***

claimed would not render obvious the use for the other factors. Hence, the restriction requirement as set forth above is deemed proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

SPECIE ELECTION

This application contains claims directed to the following patentably distinct species of the claimed invention: IGF-I, IGF-II; TGF-alpha, TGF-beta: acidic FGF, basic FGF, VEGF, PDGF, NGF and GH.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, 1, 3-9 and 12-16 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations

of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention and an invention specie, if applicable, to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

RESPONSE TO AMENDMENT

Amendment filed 27 March 2000, paper no. 10, has been made of record.

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Any inquiry concerning this communication should be directed to Examiner F.T. Moezie at telephone number (703) 305-4508 or Mr. LOW (SPE) at 308-2923. FAX: (703) 305-7401

F.T. Moezie

F. T. MOEZIE, PH.D.
PRIMARY EXAMINER
ART UNIT 1653